

APPEAL NO. 030107
FILED MARCH 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 18, 2002. The hearing officer determined that the compensable injury sustained by the appellant (claimant) on _____, does not extend to and include an injury to the left wrist in addition to the cervical area, right wrist, and right shoulder. The claimant appeals this decision and includes new evidence for consideration. The appeal file contains no response from the respondent (carrier).

DECISION

Affirmed.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that is offered for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the documents attached to the claimant's request for review, which were not offered into evidence at the hearing. Furthermore, we are not persuaded by the claimant's assertion that the documents should be considered on appeal because, due to the "incompetency" of her representative, they were not obtained prior to the hearing. Accordingly, we decline to consider these documents on appeal.

Whether the claimant's compensable injury included an injury to her left wrist was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant expresses in her appeal that she observed "dishonesty on the part of the carrier's attorney." The claimant explains that upon conclusion of the hearing and after she had left the hearing room, the carrier's attorney closed the door and remained in the room with the hearing officer. The claimant does not allege that an ex parte communication between the attorney and the hearing officer occurred after the hearing

had adjourned. While we strongly encourage hearing officers and other participants in contested proceedings to avoid even the appearance of impropriety, under the facts of the present case, we perceive no reversible error.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge